

Curbing Abuses of Legal Power in the Society

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Abstract—In a world characterized by greed and the lust for power and its attendant trappings, abuse of legal power is nothing new to most of us. Legal abuses of power abound in all fields of human endeavour. Accounts of such abuses dominate the mass media and for the average individual, no single day goes by without his getting to hear about at least one such occurrence. This paper briefly looks at the meaning of legal power, what legal abuse is all about, its causes, and some of its manifestations in the society. Its consequences will also be discussed and some suggestions for reform will be made. In the course of the paper, references will be made to various jurisdictions around the world.

Keywords—Abuse, legal, power, society.

I. INTRODUCTION

LEGAL power is power given under or by virtue of law. The use of legal power ought to be consistent with the purpose of law in the society. The purpose of law in the society should in turn be consistent with the aims of the human beings living together as a society. Legal power is best used to satisfy human needs in the society. This includes the need for protection, peace, maintenance of order and stability. The law is a means to a peaceful society.

Legal power is the ability of a person to alter his legal position or that of another person by an act or omission [1]. For example, a private individual has legal power to dispose of his property in any way that pleases him, whether by contractual relations or not. An agent properly so appointed is enabled to enter into contractual relations on behalf of his principal. A legislator has authority to make laws; the executive has authority to execute laws and enter into foreign relations, among others; police officers have authority to arrest people alleged to have committed offences; and judges have power to impose different sentences for the same type of offence in most cases.

Many cases of power produce positive results. It is when power is combined with abuse that problems begin. Many people in power abuse their authority.

II. WHAT IS ABUSE OF LEGAL POWER

Abuse of legal power is a serious threat to the existence of both law and society. Unlawful abuse of power is not a problem – the law exists to sanction it. What poses a problem is lawful abuse of power. The term abuse of power includes acts like mishandling, mismanagement, maladministration, tyranny, corruption and misgovernment. The problem of abuse

of legal power is an important factor in the search for order and justice in the society.

Abuse of legal power is the use of legislated or otherwise authorised powers by government authorities for illegitimate private gain. Such gain might include repercussion of political opponents and general police brutality. Abuse of legal power is the wrong use of legitimate ability to alter one's legal position or another person's legal position. Wrongful use of legal power may be lawful or unlawful. When the law governs not only the scope of the power but also the mode of its exercise, a wrongful exercise of that power may be unlawful. But when the person exercising legal powers has absolute discretion as to the exercise, a wrongful use of the power is not unlawful. An act constituting abuse of legal power can readily satisfy the formal test of validity in spite of the application of the doctrine of the rule of law. Government actors usually seek to ensnare perceived enemies through oppressive, capricious and whimsical laws and when all else fails, resort could be had to retroactive law making. The application of the doctrine of the rule of law can assist in diminishing arbitrary exercise of power but cannot prevent abuse of power.

Nearly every person vested with a modicum of power - be it political, bureaucratic, judicial, professional, academic, or managerial power - very soon becomes a petty despot, lording it over the population they are supposed to serve and often using the entrusted power for private gain rather than for the public good [2]. We tolerate and accept such abuse of power from our public "servants" on a daily basis; so much so that we have developed a collective numbness to it, unable to recognize it as abuse when it occurs.

World history has been dominated by the problem of abuse of power. Human beings, especially the masses have been suffering from the horrors of abuse of legal power for a long time in many parts of the world including notably, Africa, Europe and developing countries. The problem of abuse of legal power is to be found in every society, whether developed, developing or underdeveloped, but in varying degrees.

III. REASONS FOR ABUSE OF LEGAL POWER

- *Power tends to corrupt, and absolute power corrupts absolutely - Lord Acton.* Most societies today are corrupt. So abuse of legal power becomes the norm rather than the exception. Division of power between arms and levels of government, ordinarily, should curb abuses of power. But not such unclear division as obtains in third world countries.
- Lack of information, political education and enlightenment on the part of the general populace is

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another cause. In extreme cases, the populace may not be aware that power is being abused. Even where they are aware, they may not know what steps to take to end the abuse.

- Non-justiciability of some provisions is in the statute books of some States, notably those relating to the fundamental objectives and directive principles of state policy.
- Improper checks and balances system. If we had a proper one, some of the laws empowering and encouraging the abuse would have been long repealed or expunged from our statute books.
- Greed. The African state is led by elements that are caricatures of leadership, people who are hardly patriotic and incorruptible and in whose hands the state is a mere instrument of primitive accumulation and an instrument of repression. The manner in which most of its States are run is in a lot of ways, an embarrassment to all decent people. There is acute corruption in the public realm as there is very low commitment to the cause of the masses/common good on the part of the average individual, which in their consciousness, is without an owner. Most see government as an avenue for money making and not service.
- *Power does not corrupt. Fear corrupts... perhaps the fear of a loss of power. John Steinbeck*

IV. MANIFESTATIONS OF THE ABUSE OF LEGAL POWER

Sometimes government officers brazenly do acts contrary to their declared purposes and inconsistent with their mandate.

- Principles used by the courts in the course of determining issues are rules, which lean in one direction or the other. Judges may abuse their powers under the guise of administering the law as they find it. This is because judges can always reasonably justify their decisions as well as the exact opposite by judicial authorities. Some even impose their own personal values in their judgments. Therefore, legitimate abuse of power is also possible in the application of legal principles by the courts.

The customary prevailing moral habits and presumptions of the good citizen should be his criteria, not his own personal preferences [3].

Courts play a great role in checking abuses of government/public power. They should also avoid abusing their own legal power. They should not try to please the government or group in power but should act fearlessly and uphold the law always.

- One of the most common means of abuse of power is improper motive. Sometimes, lawmakers for example, make laws in the interest of a particular class of members to the detriment of other classes. Where the acts are subject to judicial review, they are treated as cases of illegality. In some cases, members of the executive implement projects only in their home localities, while legally neglecting other areas.
- Private individuals may also abuse their powers in personal relationships such as in contract, tort, family relationships, gifts, wills, etc. Private individuals make

their own rules within the limits prescribed by law. The exercise of this power should nevertheless be checked to forestall disorder in the society.

- Abuse of power includes appointing all or almost all of one's children into key positions in government, as exemplified by former Libyan leader, Muammar Gaddafi. Perpetrators of this act usually do not bother to acknowledge that there are candidates better qualified than their children are.
- In Queensland, Australia, the political system facilitates the misuse of power. Its Parliament is based on the old, flawed Westminster model but unlike Westminster and the other Australian jurisdictions, it has no second review chamber to inhibit the government of the day. The government has almost unlimited power to make whatever law it chooses. It can even enact electoral laws which favour it and enable it extend its time in power. Under this kind of system, courts are obliged to act unfairly. Respect for the courts is diminished inevitably if courts are instruments of State/political injustice [4].
- Witness, for example, the flagrant flouting and disregard of traffic regulations by road users who exhibit the trappings of power such as the blaring of sirens at a time when the law bans the use of sirens, asking other road users to give way or vacate the road, etc. Recall Uzoma Okere's case against the Nigerian Navy for assault.
- And, most recently, resort is being had to the use of blackmail (employing State resources and State-funded programs) to force obedience and conformity [5]. This recent addition to the behavioural repertoire of political leaders in Nigeria, for example, has serious implications for how citizens engage with power. Events of the past years have illustrated a drift towards megalomaniacal displays; elected officials have immersed themselves so deeply in the thrills of domination that they are no longer capable of imagining themselves outside governance. Some State governors are clearly committed to the project of making their names interchangeable with those of their States. Increasingly, the State governors have come to see the States they preside over as extensions of their persons. And they have been working insidiously towards concretizing this vision, hoping to make their image coextensive with that of their States, and vice versa. This is one example, in which the intimacy of power, achieved through the unwitting popular validation of State power rituals and discourses, supplants actual political resistance.

According to [6], "in North-central Kwara State for instance, there was in 2001/2002 a new political movement sweeping through the state, which revolved around the person of the then governor, Alhaji Mohammed Lawal. It was signposted by the branding of State-owned commercial transport buses with the inscription "up Lawal." My own first encounter with the "Up Lawal" phenomenon was during a research trip to Lokoja, when I happened on one of the "Up Lawal" buses. The scope of the project was soon expanded. The inscription was soon put on all public works projects that

the State government, under Lawal's governorship, had executed or refurbished. There emerged an even more farcical dimension to this project of personal promotion. Most of the water taps in Ilorin metropolis, the State capital, had run dry and the residents had been forced to rely on State-owned water tankers for their drinking water. To get the attention of the tankers as they drove through neighbourhoods one had to shout "Up Lawal. "The tanker operators bypassed those who were too proud or simply unwilling to say the words—mostly, but not exclusively, supporters of rival politicians and political parties. Were these tanker operators acting on their own whim or doing the bidding of superior authorities, notably the governor? We may never know for sure as the governor is likely to deny that he authorized such brazen displays of political blackmail. But everyone I spoke to believed that the governor was behind it and that it was a way to humiliate his literally thirsty opposition and its equally thirsty supporters."

- Issuance of licenses: family and party loyalists usually get first attention in these cases. Most of the time, it does not matter that there are better qualified people bidding for the same licenses.
- Termination of appointment of staff that are perceived as enemies of those in power.
- Using one's position to shield his family members from the law. Currently, Bo Xilai of China is undergoing trial on a charge of using his position as Communist Party secretary of the Western Chinese municipality of Chongqing and one of the 25 members of the party's top policy making body to shield his wife, Gu Kailai from investigation and prosecution for the murder of a British businessman Neil Heywood in 2011.
- Looting of the national or State treasury for personal and selfish ends. Abuse of power is behind most of the upheavals and scandals faced by most, if not all nations.

V. CONSEQUENCES OF THE ABUSES

- It breeds instability and chaos, though it wears the cloak of legitimacy. Study after study has elicited that there is a direct causal link between corruption and bad governance. One of the most debilitating consequences of corruption is that it distorts development and prevents society from reaping it just rewards from the democracy dividend.
- Abuse of power in developing countries has diverted attention from developmental efforts.
- Poverty- we need not define what poverty is. Either we have suffered from it in our lifetime or we have seen it in others.
- The rule of law suffers.
- The pervasive problems of underdevelopment, corruption, injustice, tribalism, poor service delivery, neglect of the population, and wastage of public assets that we live with from one government to the other are all consequences of abuse of power.

VI. CHALLENGES ENCOUNTERED IN COMBATING ABUSES

Challenges encountered in combating abuses include corruption, resistance by those favoured by the status quo and practices already ingrained into the psyche of the society. For example while former US President George Bush roundly condemned Saddam Hussein for violating the right of Kuwaitis by invading and forcibly annexing their country for six months, he refrained from making the same accusation against Israel that had illegally occupied Palestinian territory and also suppressed the years of apartheid dictatorship in South Africa. Attempts to change the status quo will not only bring on their ire, but can also bring on their wrath. However, one must ask whether in Nigerians' actual confrontations with the might of the state, they can exhibit any significant resistance, launch any sustained criticism, dare the powers that be—or whether in fact resistance is valid as a descriptive category for engagements with power expected of the politically dominated.

At the heart of the quagmire, then, are two interlocking issues: the *inability* of the governed to demand accountability and to launch sustained critiques of the State; and (at times) their *refusal* to ask questions of those in power. The second problem may start as a manifestation of economic desperation, rendering the governed practically incapable—from a purely existential or survivalist perspective—of resisting the seduction of political patronage or the temptation to compromise.

VII. SUGGESTIONS FOR REFORM

- We must realize that abuse of power tends to ignore the basic reason for the formation of the society. We, especially the lawyers, must never lose sight of the reasons for the formation of the society.
- Where the abuse of power is not unlawful, its control is mainly on grounds of morality alone. This is because no grounds exist within the law upon which such can be challenged. Under a system of legal domination, people accept rules simply because they are rules and not because of their moral quality. It is dangerous for both individuals and the organizations for the leadership to be surrounded only by people who agree with everything that is said and done. For the health of the person and group, there need to be some associates, friends, or employees involved who are strong enough to challenge the person or group when it veers away from ethical behaviour.
- Some powers are for prescribed purposes only. In some cases we have to refer to the enabling law which in most cases would set out the guiding principles for the exercise of such power. These guiding principles are sometimes referred to as secondary rules or power conferring laws and make provisions for how primary rules or laws are changed, applied or abolished.
- In some cases, we may have to resort to the Fundamental Objectives and Directive Principles of the government or State Policy. The usual practice is to indicate that powers are to be exercised for the purpose of ensuring peace,

order and good governance. This clause is however so wide that many acts of sinister and dubious motives/ulterior purposes may readily fall within the description. A very good example is that most legislatures have too wide powers for determining what is conducive to good governance.

- States should abstain from giving too much power whether statutory or otherwise to one person because it fosters corruption. Archaic laws should be expunged and replaced with new laws that make adequate provisions for the current status quo. The problem with the legal regimes of most nations are myriad and are indicated by archaic or multiple laws and regulations, overlaps in administrative and institutional structures, absence of laws in critical areas, and a general state of confusion that is a disincentive to investment by local and international investors and entrepreneurs. However, such legal provisions alone are not enough. Concrete action on the part of all parties concerned is needed. Most members of government regard the masses as being at their mercy; that is why problems like corruption, poverty, inadequate education, to mention but a few defy solution. The stereo typed concept of law as a command of a sovereign or as a mere regulator of conduct must be modified if its purpose in society is to be realised. The law is of no use if it is not of practical importance to humanity and the relevant society.
- Each individual must be entitled to equal opportunity to share in the wealth of the nation by way of equal opportunities to education, political power, self-fulfilment, etc. We must realise that power belongs to the people. Those in authority must seek at all times to know what the will of the people is. An enabling society must be provided to ensure that the citizens are free to and able to pursue their goals without undue interference with his happiness.
- No confidence votes should be passed continuously. No person, entity or organ of government is happy to hear another party continually pass votes of no confidence on it. Every member of the society must continually pass judgment on the record of the erring official or authority and continuous sentence on its future prospects. Such votes will go a long way in forming public opinion which will in one way or the other affect the fortunes of the official or authority concerned.
- Being vocal via the mass media. Names like Chief Gani Fawehinmi readily come to mind. In this wise, activism for the right purposes should be encouraged. Every abuse of power affects us all and diminishes us as a society. It is easy to ignore injustice when we are not personally involved but history shows that it is also unwise to do so. We should not be complacent in the face of injustice to others as we never know who might be the next target. As a popular saying goes,

“first, they came for the socialists and I did not speak up because I was not a socialist; then they came for the trade unionists and I did not speak up because I was not

a trade unionist; then they came for the Jews and I did not speak up because I was not a Jew; then they came for me and there was no one left to speak for me”

- Public interest litigation should be encouraged. In these days of instantaneous communication, the removal of the United Nations system and domino-like collapse of dictators across the globe, the concept of human rights provide the enduring thread to bind all peoples in common course against the evils of despotism and the scourge of underdevelopment and dependence. Human rights are of universal application, though problems remain in their actual realisation and enforcement.
- Revolution, where necessary.
- Judicial activism. Any judiciary that deals harshly with the perpetrators of abuses of office will have the full weight of public support behind it.

VIII. CONCLUSION

In the course of this paper, the writer has briefly looked at what legal abuse of power is. Its causes, manifestations and consequences have also been examined. Few suggestions were made at the end of the paper. The writer concludes that abuse of legal power is the greatest problem facing humanity today. Individuals who cynically misuse the power of the State for personal or political benefit are a far greater threat to democracy than criminals, even organised gangs. The society must stay vigilant to ultimate abuse of power and ensure that governmental power is exercised with skill and judicious mixture of reason.

The demographic balance sheet for many countries over the years however one defines democratic governance, is not something to be particularly proud of.

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